IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9050 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITENDRAKUMAR AMRUTLAL DARJI

Versus

DIST PRIMARY EDUCATION COMMITTEE

Appearance:

1. Special Civil Application No. 9050 of 1991

MR BA VAISHNAV for Petitioner No. 1

MR RC JANI for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 10/04/2003

ORAL JUDGEMENT

In this petition the petitioner has come out with the prayer that this Court should declare that the petitioner's name was required to be included in the merit/select list of Primary Teachers along with other candidates and to direct the respondent to appoint the

petitioner as Primary Teacher with Tailoring as special subject and to grant him all consequential benefits by giving him deemed date, fixation of pay, arrears of salary etc. The petitioner has also prayed for an injunction restraining the respondent from preparing a new merit/select list of Primary Teachers for the District of Mehsana and/or to provisionally appoint the petitioner on a vacant post of Primary Teacher (Tailoring) in any school under the control of the respondent.

2. It is the case of the petitioner that pursuant to an advertisement issued by the respondent authorities, the petitioner made an application for Primary Teacher of the schools mentioned in the said advertisement. Clause 4 of the advertisement prescribes the criteria on which the selection of the candidates was to be made as under;

(1) 35% of the total marks obtained at SSC Examination;

(2) 55% of the total marks obtained in the specified subjects in PTC course;

(3) 10 marks for a special subject, like TCWCG, CPL, Intermediate, Drawing etc.

The petitioner obtained 53% marks in SSC examination and passed Diploma in T.C.W.C.G. with 84% marks. The qualifying percentage of marks for the purpose of consideration of his application had come to 69.75%. Despite this fact the petitioner's name was not included in the select list and the petitioner therefore made a representation before the respondent authorities and since the said representation was not considered the petitioner was constrained to file the present petition before this Court.

3. On notice being issued by this Court on 27-12-1991 the respondent appeared and filed affidavit-in-reply thereafter. The petition was opposed by the respondents on the ground that the certificate produced by the petitioner was issued by Ekta Shivan Kala and this Certificate does not render any assistance to the petitioner because of the fact that as per the Resolution dated 15-2-1973 the certificate which was required was Teachers Diploma in Needle Craft and the said certificate has been issued by the Government itself. The petitioner in his affidavit-in-rejoinder has denied this contention and stated that the petitioner's name was omitted from the select list on an invalid

ground of nonproduction of aforesaid certificate. The petitioner has explained in detail in Para 4.1 of his affidavit-in-rejoinder with regard to the change of name done by Government Resolution dated 31-3-1976 and Circular issued by the Technical Education Board, Gandhinagar on 6-3-1990. The petitioner has further stated that persons who have obtained less percentage of qualified marks were included in the select list. It is specifically pointed out that the name of a candidate was placed at Sr. No. 41 on the select list prepared on 1-2-89 despite the fact that he has produced the certificate from the same school and his name was included and the petitioner's name was not. The respondent has filed affidavit-in-sur-rejoinder wherein it is specifically mentioned that the candidate at Sr. No. 41 was not given any appointment. It was further stated that the original certificate issued by the Gujarat Technical Examination Board was not produced by the petitioner. It was further stated that the respondent had written to the Technical Examination Board to ascertain whether the petitioner had passed the examination held by the Technical Examination Board. It was further stated in the affidavit-in-sur-rejoinder that only after the Technical Examination Board intimates to the respondent that the petitioner has passed the said technical examination, and the petitioner produces the certificate the petitioner's case would be considered on merits.

4. In the background of the above facts, the present petition is taken up for final hearing today. Mr. BA Vaishnav, ld. advocate appearing for the petitioner has reiterated all the submissions which were made in the petition as well as the affidavit-in-sur-rejoinder. He has further submitted that though he had secured more marks in the qualifying examination and the percentage of qualified marks was higher for consideration of his name in select list his name was omitted from the said list and hence the action of the respondent authorities is required to be held arbitrary, perverse and unlawful. Mr. RC Jani, ld. advocate appearing for the respondent on the other hand submitted that the petitioner cannot succeed in this petition because of the fact that his main grievance in the petition is only non-inclusion of his name in the select list. As a matter of fact, the petitioner is not having any vested right to have his name included in the select list and even if his name is there in the select list he cannot claim as a matter of right to be appointed for specified post. He has further submitted that the candidate at Sr. No. 41 was not selected for appointment and hence the grievance of the

petitioner raised in this petition should not be held to be justified. He has further produced a letter of February 2003 issued by the District Primary Education Officer, wherein it is mentioned that the Government has not made any recruitment of the Primary Teacher after the aforesaid recruitment which was questioned in the present petition and in view of the above facts the petition should be dismissed.

5. After having heard the learned advocates appearing for the respective parties and after having perused the petition and affidavit-in-reply as well as affidavit-in-rejoinder, I am of the view that the relief claimed in the petition is not required to be granted to the petitioner as no fundamental right of the petitioner is violated. Simply because his name is not included in the select list, it cannot be said that his right in any way is affected. It is settled position in law that simply because a person's name is included in the select list he cannot claim as a matter of right with regard to any appointment. Here in the present case, the petitioner's name is not included in the select list and though the persons whose names are included in the select list they have not got any appointment. More over, the respondent authorities have come out with a specific affidavit to the effect that the persons who have received less marks than the petitioner were not given appointment and lastly no recruitment is made after the last recruitment. Considering all these facts and circumstances of the case, I find no substance in the petition and hence the petition is accordingly dismissed with no order as to costs.

rmr. [K.A. Puj, J.]